

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE CONFERENCE of the NATIONAL
ASSOCIATION for the ADVANCEMENT of
COLORED PEOPLE, et al.,

Plaintiffs,

v.

WILLIAM LEE, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendants.

Civil No. 3:20-cv-01039

JUDGE CAMPBELL
MAGISTRATE JUDGE
FRENSLEY

[Putative Class Action]

**PLAINTIFFS' MOTION FOR RELIEF FROM LOCAL RULE 39.01(c)(5)(E)
REGARDING EXPERT WITNESSES' TESTIMONY**

Plaintiffs respectfully request relief from Local Rule 39.01(c)(5)(E) requiring the direct testimony of Plaintiffs' expert witnesses be reduced to writing and filed upon opposing counsel by November 11, 2024 and read aloud at trial. *See* ECF 297 at 2. Plaintiffs' two expert witnesses, Drs. Traci Burch and Jennifer Selin, proffered comprehensive reports in this case that will be the basis of their direct testimony at trial. Plaintiffs therefore seek to file and serve these reports for their testifying expert witnesses, in lieu of submitting separate written direct testimony. Plaintiffs further seek to present their expert witnesses' direct testimony via questioning, without reading aloud from the three expert reports produced in this case.

Pursuant to Federal Rule of Civil Procedure 26(a)(2) and Local Rule 39.01(c)(5)(C), Plaintiffs disclosed and provided written reports of Drs. Traci Burch and Jennifer Selin to Defendants on February 13, 2023, in accordance with the governing Scheduling Order. *See* ECF 111 at 1. Prior to that, on November 1, 2022, Plaintiffs filed a declaration from Dr. Burch in support

of their initial class certification motion. *See* ECF 105-1. Defendants have deposed both expert witnesses in this case; Dr. Selin's deposition was conducted on May 9, 2023, and Dr. Burch's deposition was conducted on May 12, 2023.

In July 2023, Defendants announced procedural changes that necessitated the reopening of discovery under Federal Rule of Civil Procedure 56(d). *See* ECF 172, 179. As this Court recognized during the February 5, 2024 teleconference, *see* ECF 281-1 at 11-12, discovery issues continued well into 2024 as Defendants' procedures were further developed. And on August 1, 2024, Defendants received Dr. Burch's supplemental expert report analyzing additional 56(d) discovery concerning Defendants' procedural changes in July 2023.

The expert reports of both Drs. Burch and Selin lay out their author's opinions relevant to this litigation, as well as the underlying analysis and research each relied upon in reaching their conclusions. *See generally* ECF 185-6 (Burch Report), ECF 291-34 (Selin Report), and ECF 291-59 (Supplemental Burch Report). These reports encapsulate, in writing, the totality of Drs. Burch and Selin's direct testimony such that any additional written statement produced pursuant to Local Rule 39.01(c)(5)(E) would be duplicative of these reports. Further, in the case of Dr. Burch's direct testimony, her reports include numerous tables, charts, and other types of visualizations of the data she analyzed that are not well suited to further reduction to purely written text. In presenting a complete explanation of the methods, data, and analysis underlying the experts' opinions, these reports will help ensure a focused examination at trial on direct and cross.

For the foregoing reasons, the Court should grant Plaintiffs' requested relief from Local Rule 39.01(c)(5)(E)'s requirement to file and serve written direct testimony from testifying expert witnesses to be read aloud at trial and permit Plaintiffs to instead file and serve the previously disclosed expert reports of their expert witnesses' testifying at trial.

Defendants do not oppose this motion.

Dated: October 22, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2024, a copy of the foregoing MOTION FOR RELIEF FROM LOCAL RULE 39.01(c)(5)(E) was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to counsel for parties below. Counsel for the parties may access these filings through the Court's electronic filing system:

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